

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN MACKLIN, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
CITY OF PHILADELPHIA, et al., :
Defendants. : NO. 00-CV-455

MEMORANDUM & ORDER

J.M. KELLY, J.

APRIL , 2000

Plaintiff, Stephen Macklin ("Macklin"), commenced this action by filing a Praecipe for Writ of Summons in the Court of Common Pleas of Philadelphia County. The Summons was served upon Defendants Detective Phillips and City of Philadelphia on December 3, 1999. Macklin's Complaint was subsequently filed on December 28, 1999. On January 24, 2000, Defendants removed Macklin's Complaint to the United States District Court for the Eastern District of Pennsylvania. Macklin now seeks to remand this case to Court of Common Pleas as untimely filed.

DISCUSSION

"Any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court. . . ." 28 U.S.C. § 1441(a) (1994). Notice of removal must "be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the

initial pleading setting forth the claim for relief upon which such action or proceeding is based. . . ." Id. § 1446(b).

Macklin argues that the required notice was set forth by the Summons served on December 3, 1999, thereby making the removal of January 24, 2000 untimely. The Summons states that the case involves "trespass, law and civil rights."

Macklin relies upon Foster v. Mutual Fire, Marine & Inland Insurance Co., 986 F.2d 48 (3d Cir. 1992), in support of his position that the Summons filed in this matter started the clock on the time period for Defendants to remove this case. While Foster recognizes that a summons under Pennsylvania practice may put a defendant on notice of a federal cause of action, the essential element the summons must present to the defendant is notice of the federal jurisdiction. Id. at 53.

It is at best unclear whether the amorphous invocation of "civil rights" in the Summons provides Defendants with notice of a federal cause of action. While many civil rights causes of action arise under federal law, federal jurisdiction is not exclusive. Civil rights could, for example, refer to the Pennsylvania Human Relations Act. 43 Pa. Cons. Stat. Ann. §§ 951-963 (1991). Accordingly, the Summons did not provide Defendants with sufficient information to determine whether Macklin was asserting a federal cause of action. This information only became known upon service of the Complaint.

Macklin argues that Defendants were on notice of the federal nature of his civil rights claim as a result of correspondence between the parties. The Court must, however, look only to the language of the Summons and Praecipe and avoid the potentially protracted subjective evaluation that would be created by examining correspondence and other extrinsic evidence. Id.

Accordingly, Defendants were not on notice of the federal nature of Macklin's claim until they were served with the Complaint. The Motion to Remand is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN MACKLIN, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
CITY OF PHILADELPHIA, et al., :
Defendants. : NO. 00-CV-455

O R D E R

AND NOW, this day of April, 2000, upon consideration of the Motion to Remand of Plaintiff, Stephen Macklin, the Response of Defendants, Detective Phillips and the City of Philadelphia, and Plaintiff's Reply thereto, it is ORDERED that the Motion to Remand is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.

